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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/647,700	10/03/2000	Birgitte Hansen	36636-166652	1109

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Venable
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Washington, DC 20043-9998

EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 08/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/647,700

Applicant(s)
BIRGITTE HANSEN ET AL.

Examiner
YVONNE M. HORTON

Art Unit
3635



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 28, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10, 11, 13, and 14 is/are rejected.
- 7) ☒ Claim(s) 8, 9, and 12 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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DETAILED ACTION

Allowable Subject Matter

1. The indicated allowableness of claims 1-7,10,11,13 and 14 is withdrawn in view of the newly discovered reference(s) to SWEDISH PATENT #374578. Rejections based on the newly cited reference(s) follow.
2. Claims 8,9 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1-7,10,11,13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swedish Patent #374578. 374578 discloses a cap member (14,16) having hidden (21) bent portion (40) that engages a an engagement means (20) disposed on a side member (15). 374578 discloses the basic claimed cap cover except for the bent portion being integral therewith and except for the position of the bent portion. In regards to the bent portion (21,40) not being integral with the cap (14,16), it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct a formerly integral structure in various elements, since it involves only routine skill in the art. In regards to the position of the bent portion (21,40), it also involves routine skill in the art to rearrange or locate elements of an invention. Regarding claim 2, the cap (14) pivots, see figure 7. In reference to claim 3, the cap is secured to an upper portion (12) a lower portion (13) and side portions (15) of an opening (11) by fittings (F) and securing means (20,21), see marked attachment. In regards to claim 4, the brackets (20,21) have apertures; however, the apertures are not key-hole apertures. Keyhole apertures are old and very well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art to provide the assembly of 374578 with a keyhole aperture in order to provide the cap with a means for adjustability. In reference to claims 5 and 6, the securing means are screw holes and the fittings are fasteners (F). Regarding claims 7 and 10, the cap is U-shaped with integral bottom (B) and side walls (S). In reference to claim 11, the engagement

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means (20) has a bent flange (38) wherein the engagement means (20) is parallel to the wall.

Regarding claim 13, the cap is for a top hung window (11) made in two portions - an upper portion (24) and a lower portion (25). In reference to claim 14, the frame is secured by screws (F). Without a translation it is unknown what the material of the cap is formed from. However, it would have been an obvious matter of design choice to one having ordinary skill in the art to select a known material on the basis of its suitability for the use intended.

Response to Arguments

6. Applicant's arguments with respect to claims 1-7,10,11,13 and 14 have been considered but are moot in view of the new ground(s) of rejection.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909.


Yvonne M. Horton
Patent Examiner
Art Unit 3635
August 12, 2002

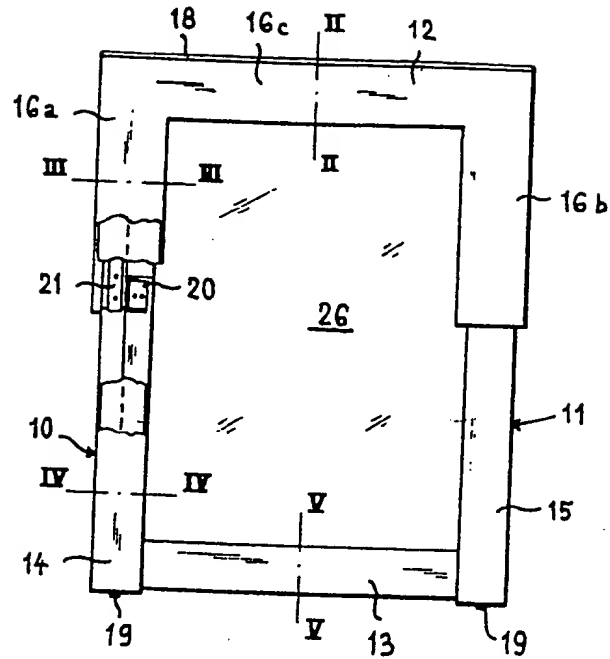


FIG. 1

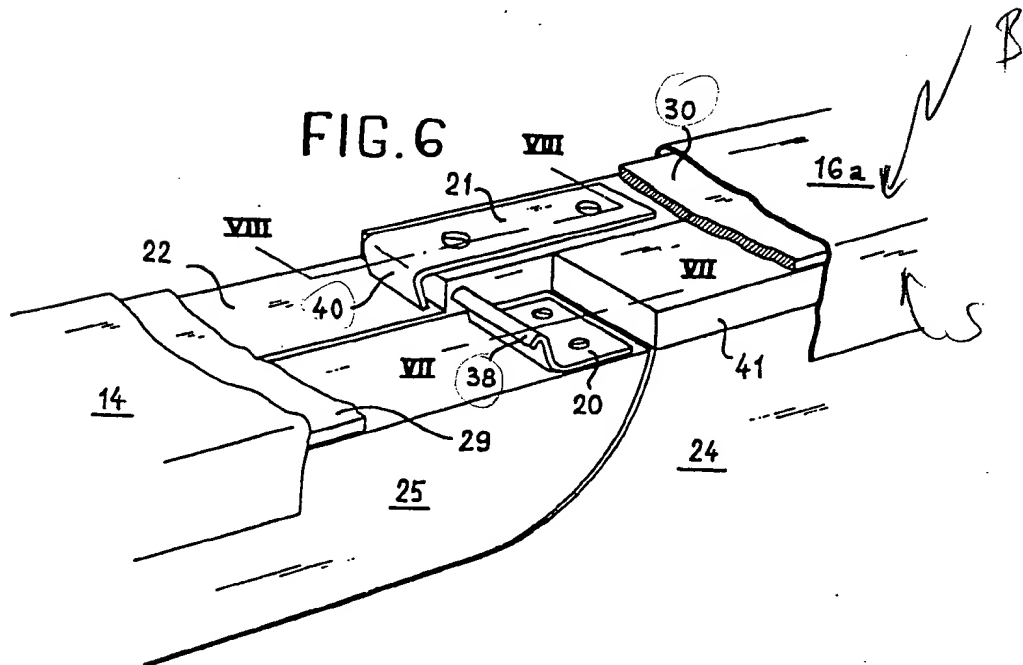


FIG. 6

